



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

July 5, 2000

The Honorable Henry J. Hyde  
Chairman  
Committee on the Judiciary  
U. S. House of Representatives  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Hyde:

Thank you for your letter regarding the Commission's initiative to facilitate development of telecommunications competition in multiple tenant environments. On July 7, 1999, the Commission released its *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 99-217 and CC Docket No. 96-98. Among other things, the *NPRM* sought comment on the Commission's authority to take action to ensure that competitive local telecommunications service providers will have reasonable and nondiscriminatory access to rights-of-way, buildings, rooftops, and facilities in multiple tenant environments. In your letter, you express concern regarding both the underlying need for regulatory action and the constitutional implications of potential actions discussed in the *NPRM*.

The *NPRM* represents one step in the Commission's ongoing efforts to foster competition in local telecommunications markets pursuant to Congress' directive in the Telecommunications Act of 1996. These efforts are intended to bring the benefits of competition, choice, and advanced services to all consumers of telecommunications, including both businesses and residential customers, regardless of where they live or whether they own or rent their premises. In particular, this item addresses issues that bear specifically on the availability of facilities-based telecommunications competition to customers in multiple tenant environments, including, for example, apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities.

The Commission has not yet reached any conclusions regarding the matters discussed in the *NPRM* and, as a result, has not yet determined the competitive ramifications of building owners' actions. The Commission is currently reviewing over 1000 comments that were filed in response to the *NPRM* and a related *Notice of Inquiry* by telecommunications companies, electric utilities, building owners, and State and local governments, including comments that address both the market and the constitutional issues. Based on that record, the Commission will consider carefully whether building owners are exacting monopoly power and what regulations, if any, are appropriate.

The Commission recognizes that certain potential actions discussed in the *NPRM* raise important constitutional issues. The Commission has not decided whether to take any action, but

let me assure you that we are committed to ensuring that any requirements we adopt would comport with the U.S. Constitution, and the attendant rights of property owners. To this end, our General Counsel's office is working closely with other Commission staff to evaluate carefully the constitutional issues raised by the *NPRM*. I want to assure you that our staff will be considering carefully these important and complex constitutional issues, as well as other legal and policy issues raised by the *NPRM*, before it makes its recommendations to the Commission for its consideration.

I appreciate your interest and participation in this proceeding. We have placed your letter in the record of this proceeding and will give it full consideration along with all other comments. Please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. Kennard". The signature is fluid and cursive, with the first name "William" and last name "Kennard" clearly distinguishable.

William E. Kennard  
Chairman

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Congress of the United States

House of Representatives Jun 6 10 04 AM '00

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May 30, 2000

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Honorable William E. Kennard  
 Chairman  
 Federal Communications Commission  
 445 12th Street, S.W.  
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

Dear Chairman Kennard:

I am writing regarding the serious policy and constitutional concerns raised by the Federal Communications Commission's proposed mandatory access rule which would allow telecommunications companies the right to enter, occupy, and use space in buildings without the consent of the property owners.

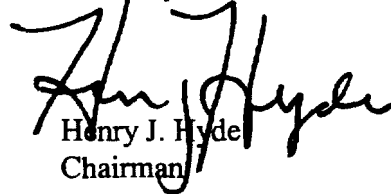
While I understand the Commission's interest in promoting the availability of telecommunications services, tenant demand for the most advanced technologies and the economic incentives for property owners to provide them have created a dynamic, highly competitive real estate industry in which federal regulation is both unwarranted and inappropriate. For a building to remain competitive in today's marketplace, it must offer tenants not only a wide array of telecommunications services, but also an array of choices in telecommunications service providers. Tenants today are demanding the most advanced technologies at the most affordable costs and the real estate industry is responding to those needs.

Claims that building owners have "monopoly" power and are exercising it to thwart telecommunications competition are, in my view, unproven. The vast majority of landlords provide reasonable and ready access to telecommunications providers. As a result, revenues of telecom companies have grown by 2,700 percent in just five years, according to the Commission's own statistics. If there is evidence that building owners

have "monopoly" power; please provide such information to the Committee. In 1996, the Commission acknowledged the competitiveness of the real estate sector through its findings that no entity exercised enough market power to warrant pre-merger notification of federal antitrust authorities. It would appear that the marketplace is working successfully, to the benefit of tenants, telecommunications providers, and property owners alike and any federal intrusion, at this time, may be misguided.

While I share the Commission's commitment to the promotion of competition in the local telecommunications markets, it would appear that the marketplace is adequately serving the needs of tenants and telecommunications providers, and that regulatory intervention in the form of forced access is simply not warranted. Furthermore, I cannot support a policy that does not recognize the established private property rights of building owners. While these compelling policy and constitutional arguments remain, I urge the Commission to fully consider these rights before moving forward with any forced access regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry J. Hyde". The signature is fluid and cursive, with the first name "Henry" and last name "Hyde" clearly distinguishable.

Henry J. Hyde  
Chairman

HH:sf